

Fundamentals of Debt Financing

The Role of Bond Counsel

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By

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Background

- Nineteenth Century Litigation Concerning Validity of State and Local Government Bonds
- Legal Expertise Avoids Loss and Promotes Liquidity of Bonds

Background

- Modern Concerns About Complexity of Laws and Frequency of Litigation Justifies Special Legal Expert and May Shift Certain Liabilities
- Contrast Special Purpose Finance Counsel With Regular General Counsel
- Compensation

Analyzing Financing Purposes, Structure & Goals in a Legal Context

- Purposes of Financing
 - Authorization -- borrowing powers; agent for sale powers; type of project
 - Suitability of project financing to achieve purpose
 - Constitutional Issues -- religious affiliation; equal protection; due process

Analyzing Financing . . .

- Structure of Financing
 - Statutory Requirements
 - Tax Requirements
 - Arbitrage Limitations
 - Private Activity Bond Limitations
 - Financial Terms
 - Principal Repayment and Interest Rates
 - Repayment Sources and Key Financial Covenants
 - Credit Enhancement--Insurance and Bank Facilities
 - Innovations--Tender Features, Options, Etc.

Analyzing Financing . . .

- Defining and Reviewing Financing Goals
 - Spreading Capital Costs Over Future Taxpayers or Ratepayers
 - Reducing Costs or Avoiding Covenants by Refunding or Restructuring Debt
 - Modifying Debt Repayment to Reduce or Accelerate Debt Service

Design Proceedings For Issuing Debt

- Satisfying Statutory Requirements -- Public hearings, notice to Legislature, publication and posting of notices, use of resolutions or ordinances or indentures or trust agreements

Design Proceedings

- Delegation Concerns
- Competitive Sale or Negotiated Sale
- Due Diligence Review of Issuer, Borrowing and Disclosure

Drafting Legal Documents

- Basic Borrowing Documents
 - Indenture or Trust Agreement
 - Lease or Installment Sale Agreement
 - Loan Agreement
 - Tax Certificate
 - Closing Documents

Drafting Legal Documents

- Disclosure and Underwriting Documents
 - Official Statement or Offering Memorandum
 - Bond Purchase Contract (negotiated sale) or Official Notice of Sale (competitive sale)
 - Continuing Disclosure Agreement
 - Remarketing Agreement (for securities with a tender or put feature)

Delivering Legal Opinions

- Final Opinion of Bond Counsel
 - Validity of Debt
 - Tax-Exempt Status of Interest on Debt
 - Security for Debt -- Repayment Source

Delivering Legal Opinions

- Disclosure and Securities Law Opinion
 - 10b-5 Opinion -- Adequate Disclosure
 - No Registration Under the '33 Securities Act or Qualification Under '39 Trust Indenture Act
 - Validity of Purchase Contract
- Supplemental Opinions/Reliance Letters
 - Bankruptcy Issues
 - Pending Litigation

Delivering Legal Opinions

- Significance of Opinion
 - Reliance Upon Advice of Counsel Defense

Consulting on Post-Closing Matters

- Interpreting Legal Documents (in light of subsequent events)
- Arbitrage Rebate Analysis
- Continuing Disclosure Reports (S.E.C. Rule 15c2-12)
 - Annual Reporting Requirements
 - Reporting Significant Events

Consulting on Post-Closing Matters

- Auditor's Inquiries
- Trustee's Inquiries